



# FPPC Bulletin

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### **FPPC Bulletin Now Available Via E-mail**

- System provides fast delivery, user-friendly format
- For details on signing up, see article on Page 24

## **FPPC Encourages Public Voice In Process Of Adopting Rules**

By John Wallace  
Assistant General Counsel

The Fair Political Practices Commission encourages active public participation in its unique process of adopting, amending and repealing regulations.

This article describes, in straightforward language, how interested Californians can and do join in this important process.

### **History of Popular Support**

The people of California enacted the Political Reform Act by initiative in 1974. The initiative was an effort by the people to impose a comprehensive

set of ethics laws on candidates and public officials at all levels of state and local government.

In addition to enacting the statutes that comprise the Political Reform Act, the voters also created the bipartisan and independent Fair Political Practices Commission. The FPPC consists of five commissioners, including a full-time chairman and four part-time members. The FPPC has primary responsibility for the impartial, effective administration of the Political Reform Act.

### **Unique Procedure**

In addition to enforcing the

*(Continued on page 12)*



**FPPC  
Toll-free Advice Line:  
1-866-ASK-FPPC  
(1-866-275-3772)**

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### Includes Frequently Asked Questions and Answers

## **Web Site Offers Expanded Prop. 34 Information**

As part of its outreach and education effort, the Fair Political Practices Commission is expanding the Proposition 34 section of its web site, with the goal of easier access to publications, charts, regulations and other materials relating to the complex ballot measure.

The section can be found by going to the FPPC's web site, [www.fpp.ca.gov](http://www.fpp.ca.gov), and clicking on the "Prop. 34" section tag.

Proposition 34 was passed by California voters in 2000 and much of the subsequent work of the FPPC has been devoted to

*(Continued on page 5)*

### Future Commission Meeting Dates

The Fair Political Practices Commission is currently scheduled to meet on the following dates the remainder of this year:

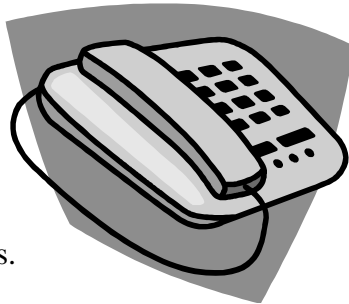
Friday, December 7

Meetings generally begin at 9:30 a.m. on Fridays and 10 a.m. on Mondays in the 8th floor hearing room at 428 J Street, Sacramento, unless otherwise noticed.

### Toll-free Advice Line: 1-866-ASK-FPPC

Public officials, local government filing officers, candidates, lobbyists and others with obligations under the Political Reform Act are encouraged to call toll-free for advice on issues including campaign contributions and expenditures, lobbying and conflicts of interest. *FPPC staff members answer thousands of calls for telephone advice each month.*

The FPPC provides written advice in response to more complicated questions.



### California Fair Political Practices Commission

Karen Getman, Chairman  
Sheridan Downey III, Commissioner  
Thomas S. Knox, Commissioner  
Carol Scott, Commissioner  
Gordana Swanson, Commissioner

### Commission Meetings

Meetings are generally scheduled monthly in the Commission Hearing Room, 428 J Street, 8<sup>th</sup> Floor, Sacramento. Please contact the Commission or check the FPPC web site, [www.fppc.ca.gov](http://www.fppc.ca.gov), to confirm meeting dates.

Pursuant to Section 11125 of the Bagley-Keene Open Meeting Act, the FPPC is required to give notice of its meetings ten (10) days in advance of the meeting. In order to allow time for inclusion in the meeting agenda and reproduction, all Stipulation, Decision and Order materials must be received by the FPPC no later than three (3) business days prior to the ten day notice date.

To receive a copy of the Commission meeting agenda (free) or a copy of the full meeting packets (\$10/month or \$100/year) contact the Commission at (916) 322-5660. The agenda and packet also are available free of charge on the Commission's web site at [www.fppc.ca.gov](http://www.fppc.ca.gov). Additionally, past and future agendas are posted on the web site.

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## Ruling Supports FPPC On Lobbyist Contributions

# Judge Upholds Proposition 34 Provision

The constitutionality of a key provision of Proposition 34 has been upheld by United States District Court Judge Frank Damrell.

The provision bans lobbyists from making contributions to elected state officers or candidates for elective state office - if that lobbyist is registered to lobby the agency for which the candidate is seeking election, or the agency of the elected state officer.

The judge ruled against a lobbyist group that filed suit to block the provision. The ruling was in favor of arguments by the Fair Political Practices Commission and the state Attorney General's office, which were both named as defendants in the suit. The lobbyist group has appealed the case.

"We are very pleased with the court's ruling," said FPPC Chairman Karen Getman. "It is a strong statement in support of the statute and our interpretation of it."

In a 21-page ruling filed Sept. 17 in U.S. District Court in Sacramento, Judge Damrell also denied a motion by the Institute of Governmental Advocates to block implementation of the lobbyist provision of Proposition 34, the campaign finance measure approved by voters last November. Damrell's ruling is available on the FPPC web site at [www.fppc.ca.gov](http://www.fppc.ca.gov).

"California has a legitimate state interest in avoiding the potential for corruption and the appearance of corruption that could occur if lobbyists, whose continued employment depends on their success in influencing legislative action, are allowed to make campaign contributions to the very persons whose decisions they hope to influence," Damrell ruled.

The ruling upheld Section 85702 of the Political Reform Act, as amended by Proposition 34.

The lobbyist group originally filed the suit last

March in the 3rd District Court of Appeal in Sacramento. The state appellate court dismissed the suit the following month, and it was re-filed by IGA in May in federal court. The FPPC and Attorney General Bill Lockyer answered the complaint, and both sides moved for summary judgment soon thereafter. Judge Damrell heard arguments on August 24 in U.S. District Court in Sacramento.

A motion for summary judgment is a procedure used to decide a case when the parties can show that a trial is not necessary because the important facts in a case are not in dispute. IGA has appealed the judge's decision to the 9th Circuit U.S. Court of Appeal.

In its complaint, IGA alleged that the Proposition 34 ban on lobbyist contributions to officials and candidates the lobbyist is registered to lobby unfairly abridged lobbyists' constitutional rights of freedom of speech and association - denying them



equal protection of the laws by treating them differently than other people.

Damrell's order rejected the plaintiffs' claim that the statute constituted an overly broad ban on lobbyist contributions, citing the narrow language of the statute itself and the many ways a lobbyist may continue to exercise political speech and rights of association.

Deputy Attorney General Susan Oie, assisted by FPPC General Counsel Luisa Menchaca and FPPC counsel Scott Tocher, argued the case for the FPPC and the Attorney General's office. Thomas W. Hiltachk of Bell McAndrews Hiltachk and Davidian represented the IGA.

## *Governor Signs Bill To Require Earlier Disclosure Of Large Contributions*



Gov. Gray Davis has signed long-debated legislation that amends sections of Proposition 34 and requires earlier disclosure of certain large political contributions.

Several major provisions of the bill were strongly supported by the Fair Political Practices Commission. The FPPC had encouraged the governor to sign the measure.

The legislation, SB 34 by Senate President *pro tem* John Burton, was signed by Davis on Sept. 4. Proposition 34, a statewide campaign finance ballot measure, was approved by voters in 2000.

SB 34 took effect immediately.

“While the bill (SB 34) is not perfect in every detail, it resolves many of Proposition 34’s technical shortcomings,” FPPC Chairman Karen Getman wrote on behalf of the commission in an Aug. 29 letter to the governor. “Although the Commission does not individually endorse every change made by the bill, it strongly supports several of the major provisions.”

Getman said those provisions include:

- ◆ Increased disclosure required

of member communication payments made by political parties under Government Code Section 85312. This provision returns the state of the parties’ member communication reporting requirements to what they were prior to the passage of Proposition 34.

- ◆ A change in the paid ballot measure spokespersons disclosure requirement in Government Code Section 84511 to shift the reporting obligation to the committee making the payment.
- ◆ Clarification as to which sections of Proposition 34 currently apply to all candidates and which are delayed in their application to statewide candidates until after the next statewide general election.

Getman, in her letter, said the provision requiring increased disclosure by political parties would resolve much of the controversy surrounding party membership communications that arose during this year’s Los Angeles mayoral primary election.

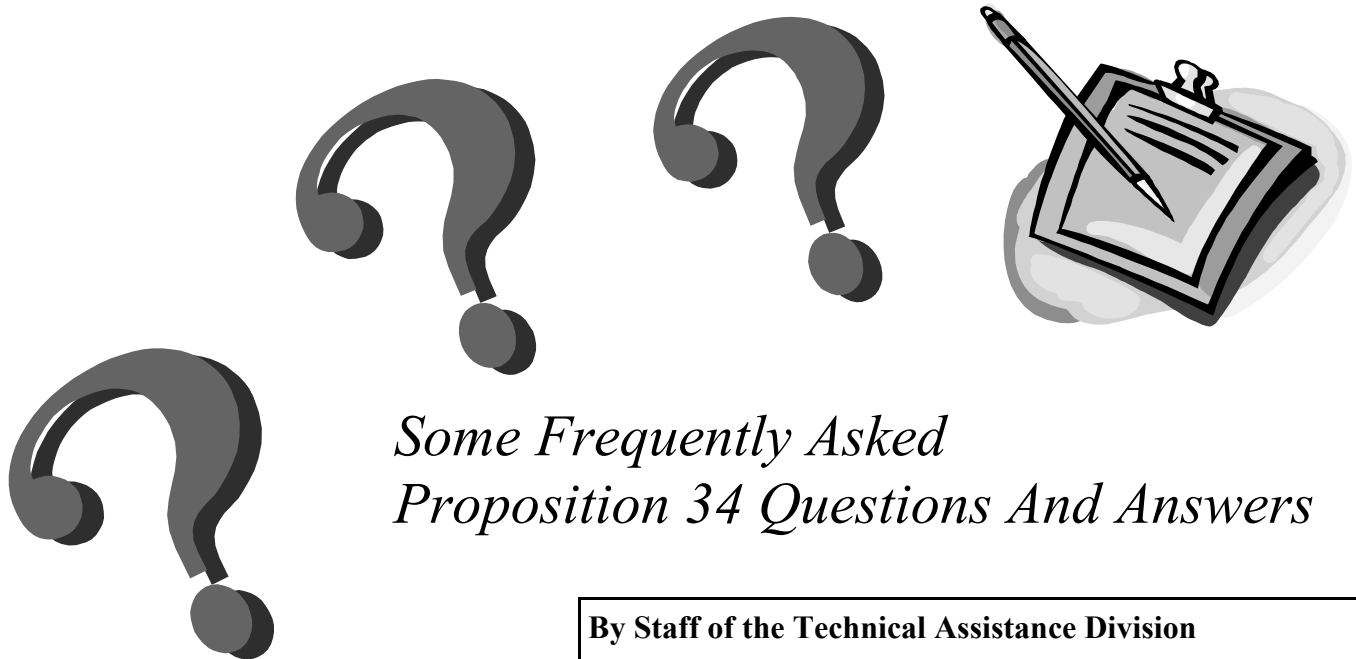
“As the Agency with primary responsibility for interpreting and enforcing the (Political Re-

form) Act, the Commission believes SB 34 will ensure adequate public disclosure by political parties, as well as the integrity of local campaign reform regimes, while continuing to recognize that regulation of these entities is a matter of statewide concern,” the chairman wrote.

Getman said that while the FPPC did not request the following provisions of SB 34, it was “encouraged” by their inclusion in the bill:

- ◆ Earlier disclosure of large contributions (\$5,000 or more) made in support of, or opposition to, state candidates and ballot measures more than 90 days prior to an election. Under Government Code Section 85309, these payments will be reported within 10 business days.
- ◆ Clarification that political party payments for state candidate-requested member communications must come from funds subject to the \$25,000 per source contribution under Section 85303.

For details on other legislation signed by Gov. Davis, see the Legislative Update on Page 15.



## *Some Frequently Asked Proposition 34 Questions And Answers*

### ***Web site expanding....***

*(Continued from page 1)*

revising regulations, forms and other materials to implement the extensive revisions of the Political Reform Act.

Both the web site and this issue of the *FPPC Bulletin* also contain a new set of frequently asked questions and answers relating to Proposition 34.

The new questions and answers, found elsewhere on this page and on Pages 6 and 7, are supplied by staff members of the FPPC's Technical Assistance Division. Remember, for individual assistance please call the FPPC's toll-free advice line at 1-866-ASK-FPPC (1-866-275-3772).

For more information on other new FPPC web site developments, see the article on Page 11.

### **By Staff of the Technical Assistance Division**

*The FPPC is adopting regulations to further clarify and implement provisions of Proposition 34. Campaign committees should check the FPPC's web site — or call for toll-free advice at 1-866-ASK-FPPC — for the specific language of the regulations and the Political Reform Act, and to receive the most up-to-date information.*

**Q.** *Jane Martin is a candidate for Assembly. In January 2002, she makes a personal contribution (not a loan) of \$500,000 to her assembly campaign. What special filing obligations does Supervisor Martin incur?*

**A.** Ms. Martin must amend her Form 501, Statement of Intention, to show the date on which her personal contributions exceeded the expenditure limit (see Government Code section 85400). The amended Form 501 must be filed within 24 hours of the date she makes the contribution and sent by either personal delivery or guaranteed overnight mail to the Secretary of State. The Secretary of State will then make the information publicly available. This is the case whether the candidate accepts the voluntary expenditure limits or not. (FPPC Regulation 18542.)

**Q.** *Jane Martin, the candidate who contributed in excess of the expenditure ceiling in the question above, is running for the Democratic nomination in the primary. Will her \$500,000 contribution lift the expenditure ceiling for all*

*(Continued on page 6)*

*(Continued from page 5)*

*candidates running in the primary or only those on the Democratic ticket?*

**A.** All candidates for that office are no longer subject to the expenditure ceilings regardless of their party. (Regulation 18543.)

**Q.** *Jane Martin has lost in the primary. Will the expenditure ceiling be restored for the general election or has her donation, made before the date of the primary, lifted those ceilings as well?*

**A.** Even though Jane Martin will not be a contender in the general election, her contribution has lifted the expenditure ceiling for all candidates in the general election. (Regulation 18543.)

**Q.** *Assemblymember Grace Messler has two committees: one for future reelection to the Assembly and one for a past election. She directed a \$3,000 contribution from one committee to a fellow assembly member's primary race and would like to contribute \$3,000 from her other committee to the assembly member's primary election. May she do this?*

**A.** No. Because Assemblymember Messler directs and controls the expenditures of the two committees, the two committees are considered affiliated entities under Government Code section 85311, and their contributions must be aggregated.

**Q.** *In January 2002, a candidate for Assembly, who has accepted the voluntary expenditure ceiling, purchases radio time for broadcasts specified in the contract to be aired in October 2002. How will she allocate this expenditure? Does it count against the \$400,000 limit for the primary election or against the \$700,000 ceiling for the general?*

**A.** The expenditure is allocated to the election following the broadcast which, in this case, is the general election. Even though the purchase was made before the primary election, since specific broadcast dates in October were purchased, the expenditure will be allocated to the general election limit. (Regulation 18540.)

## *Frequently Asked Questions And Answers On Transfers Under Proposition 34*

**By Staff of the Technical Assistance Division**

The Political Reform Act was amended by Proposition 34, in part, to regulate contributions received by state candidates.

Government Code section 85306 permits certain transfers between a state candidate's committees for state elective office. Regulation 18536 was adopted by the Fair Political Practices Commission to clarify questions concerning such transfers.

The following are some of the most frequently asked questions regarding transfers of contributions:

**Q.** *A committee for state Assembly 2000 has debt and cash on hand. May the committee transfer cash on hand to a reelection committee for 2002?*

**A.** Even though the 2000 committee has debt, it may transfer any contributions received prior to January 1, 2001, to the 2002 reelection committee without attribution or limit.

**Q.** *A committee for state Senate 1998 had cash on hand as of January 1, 2001, and continued to raise contributions into the committee during 2001. May the committee transfer cash on hand to a reelection committee for 2002 and, if so, how is the transfer reported?*

**A.** Yes, the 1998 committee may transfer contributions into the committee for reelection. However, unlike funds raised prior to January 1, 2001, contributions raised on or after January 1, 2001, must be attributed to the committee's contributors when transferred to the reelection com-

(Continued from page 6)

mittee and are subject to Proposition 34 limits. For contributions raised by the 1998 committee on or after January 1, 2001, the 2002 committee must report receipt of contributions transferred on Schedule A of the Form 460, itemize those contributions of \$100 or more from a single contributor and provide cumulative totals for the primary and general election. For contributions raised by the 1998 committee prior to 2001, for which no attribution is required when transferred, the 2002 committee should report the contributions received on Schedule I of the Form 460, as miscellaneous increases to cash.

**Q.** *Is the committee that receives a transfer required to verify the address, occupation, and employer of the contributor whose contribution is transferred to assure the information is up-to-date?*

**A.** No. The committee may simply provide the address, occupation, and employer information originally reported.

**Q.** *May an Assembly 2002 committee receive \$6,000 (\$3,000 for the primary and \$3,000 for the general) from a single contributor in the form of a contribution transfer?*

**A.** Yes.

**Q.** *How would a candidate's committee use the LIFO (Last In, First Out) method for transferring contributions?*

**A.** The committee making the transfer would start with the most recent contribution received and go back in reverse chronological order, transferring contributions up to the \$3,000 per source, per election limit. If another transfer is made after new contributions have been received into the transferring committee, the committee would then start with the most recent contribution that has not been transferred.

**Q.** *How would a candidate's committee use the FIFO (First In, First Out) method for transferring contributions?*

**A.** The committee making the transfer would start with the earliest contribution received and go forward chronologically.

**Q.** *A Senate 1998 committee has lawn signs and other non-monetary assets it would like to transfer to a 2002 reelection committee. How would the 1998 committee report transferring the assets to the 2002 committee, and how would the 2002 committee report receiving the assets?*

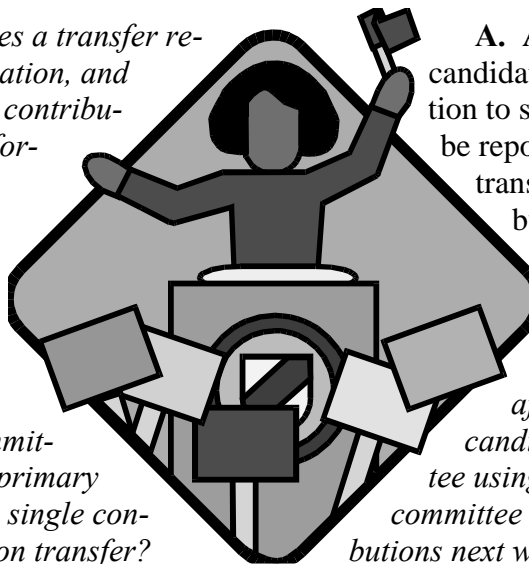
**A.** Assets transferred between a candidate's own committees for election to state office are not required to be reported by either committee; the transfers may be made without attribution or limit.

**Q.** *A Senate 1998 committee transferred a portion of the contributions it received on or after January 1, 2001, to the candidate's 2002 reelection committee using the LIFO method. The 1998 committee will transfer additional contributions next week. May the committee now use the FIFO method to attribute transfers?*

**A.** No. Once a committee has used one method, either LIFO or FIFO, to make transfers of contributions to a committee, all future transfers by that same committee must be made using the same method.

**Q.** *Must a major donor report on its statement that a previous contribution made was transferred to a new committee?*

**A.** No.



## FPPC Staff Notes...

# Commission Names Krausse As Executive Director

The Fair Political Practices Commission has named Mark Krausse as the agency's executive director.

Krausse previously served as the FPPC's government relations director and as a senior Commission counsel.

The five-member Commission announced the appointment following its September meeting.

"Mark has been an integral part of the Commission's executive staff since his arrival here," said FPPC Chairman Karen Getman. "He has done a masterful job of representing our interests with outside agencies and the Legislature. We are extremely pleased that he has agreed to serve as our executive director."

Krausse, 37, was the FPPC's government relations director since February 2000, providing legislative analysis and legal counsel to the Commission. He also had recently been serving as the agency's acting executive director. In addition to his new executive director post, Krausse will continue his government relations duties.

As an FPPC staff counsel, Krausse was responsible for drafting regulations, opinions and advice letters to public officials and others regulated by the Political Reform Act of 1974, including a regulation to implement Proposition 34's provisions



*New FPPC Executive Director  
Mark Krausse*

on transfers of campaign funds. Krausse also represented the Commission in federal court litigation over the constitutionality of the statutory ban on contributions from foreign nationals.

As executive director, he serves as the FPPC's chief of staff and is responsible for day-to-day operations and management of an agency with 80 employees in four divisions – Administration, Technical Assistance, Legal and Enforcement

Before joining the Commission's Legal Division staff, Krausse worked in a variety of legislative, government and lobbying positions. He was legislative representative for the state Department of Education, representing the department before the legislature and the gover-

nor's office, from 1999 until he joined the FPPC in February 2000. From 1997-98, he was vice-president and legislative advocate for the Association for California Tort Reform, working with other statewide associations and coalitions and representing ACTR before the legislature. From 1996-97, he was director of governmental and corporate relations for The Doctors' Company, a national physician-owned medical malpractice insurance carrier.

From 1994-96, he was a consultant and legal counsel to then-Senate Majority Leader Henry Mello, providing legal counsel on a wide range of statutory and constitutional issues and serving as the senator's designee to the state Coastal Conservancy. From 1993-94, he managed the five-member legislative unit within the California State Teachers' Retirement System. From 1988-93, he was a legislative and budget consultant to the state Senate and the Assembly.

Krausse received his bachelor's degree in Government from California State University, Sacramento, and his juris doctorate from the University of the Pacific, McGeorge School of Law. A native of Mount Shasta, in Siskiyou County, he has lived in Sacramento for 18 years.

Krausse succeeds Wayne

*(Continued on page 11)*



# Litigation Report

## ***California ProLife Council PAC v. Karen Getman et al.***

On October 19, 2000, the court denied plaintiff's motion for preliminary injunction and dismissed seven of the ten counts in the complaint. Plaintiffs dismissed the Sacramento County District Attorney, and the remaining defendants – the FPPC and the Attorney General – answered what was left of the complaint. The parties next reached a stipulation for further partial dismissal, leaving only the two counts pending. It is expected that these two counts will be presented to the court for final adjudication in cross motions for summary judgment filed late in 2001 or in January of 2002. Trial, if necessary, is set for June 24, 2002.

## ***Institute of Governmental Advocates, et al. v. FPPC et al.***

The Institute of Governmental Advocates filed a Petition for Writ of Mandate with the Third District Court of Appeal, asking the court to stay enforcement of section 85702. Added to the Act by Proposition 34, this provision bars lobbyists from making contributions to candidates and officeholders whom the lobbyists are registered to lobby. The Court of Appeal denied the Petition, and the action was refiled in federal district court, which decided the matter on cross mo-



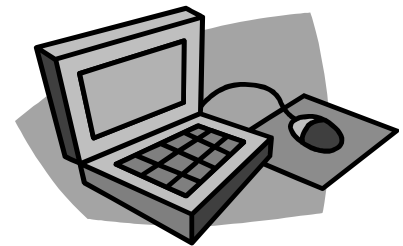
tions for summary judgment. On September 17, District Judge Frank Damrell granted the Commission's motion and denied Plaintiffs' cross motion. The district court entered judgement for the FPPC and plaintiffs have since filed a notice of appeal in the Ninth Circuit Court of Appeals. The Commission will be defended on appeal by the office of the Attorney General.

## ***Henry F. Ramey v. FPPC***

Plaintiff sought a declaration in Sacramento County Superior Court that the Commission acted beyond its power in adopting Regulations 18704.2, 18705.1, and 18705.2 during the Commission's Phase 2 overhaul of its conflict of interest regulations. The complaint alleged that these revised regulations reduce the obligations of public officials below a threshold established by statute and governing case law. The Commission filed a motion for summary judgment, which was granted on September 25, 2001. A final order was filed and endorsed on October 12, 2001.

## ***Danny L. Gamel et al. v. FPPC***

On September 11, 2001, the Commission adopted the proposed decision of an Administrative Law Judge assessing a penalty of \$8,000 against plaintiffs for making campaign contributions in violation of sections 84300 – 84302 (four counts). Plaintiffs have contested this decision by moving for a writ in the Fresno County Superior Court. A hearing has been set for November 20, 2001. The Commission will be represented by the office of the Attorney General.



*Updates on litigation  
and other FPPC news  
items are available  
on our  
expanded web site:*

***www.fppc.ca.gov***

## Program promotes civic education and public service Executive Fellow Placed At FPPC

By Jon Matthews

FPPC Publications Editor

California's Executive Fellowship Program has a long history of attracting talented participants for a year of graduate education, public service and professional development.

Many of the fellows have gone on to become leaders in government and a wide variety of other fields.

Drawn from a national pool of applicants, the fellows spend a significant share of their time working side-by-side with mentors in individual state agencies.

New executive fellow Scott Burritt, a graduate of public policy and management from the University of Southern California, has been placed at the Fair Political Practices Commission for the 2001-2002 program. His mentors are FPPC Chairman Karen Getman and FPPC Executive Director Mark Krausse.

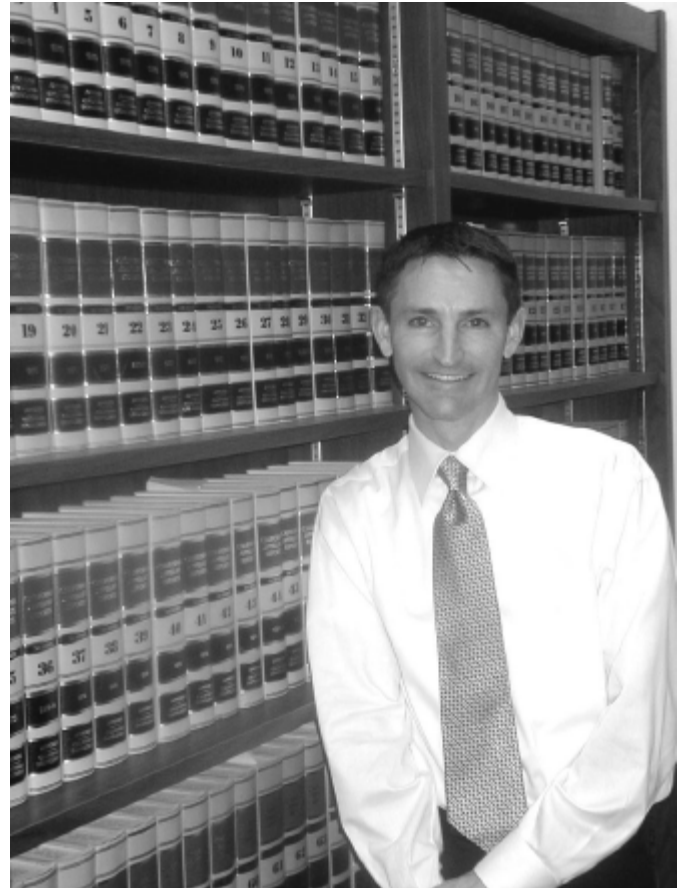
"We are delighted to again take part in the Executive Fellowship Program and are thrilled to have Scott selected for our agency. His education, background and enthusiasm fit perfectly with both our duty to administer the Political Reform Act and our goal to better serve the regulated community and the public," said Getman.

Because the FPPC is a relatively small state agency, Burritt will have the opportunity to work on a diverse series of projects involving all FPPC divisions, as well as to participate in weekly executive staff meetings. His busy schedule includes helping the agency monitor and analyze the many legislative proposals that seek to amend the Political Reform Act.

"Scott has hit the ground running and hasn't hesitated to immerse himself in challenging work," said Krausse.

The Executive Fellowship Program is a partnership between the Office of the Governor and California State University, Sacramento.

"I have long been committed to civic involve-



*Executive Fellow Scott Burritt in the FPPC law library*

ment, and the Executive Fellowship Program is providing me with an exciting opportunity to learn about the complexities of governance. The program ultimately will allow me to participate in my community on a deeper and more meaningful level," Burritt said.

The fellowship program encourages a diverse pool of applicants, including recent graduates as well as those who already have substantial career experience.

Burritt graduated from USC in 2000. But he also has over 10 years of experience as an office administrator at a Los Angeles law firm. Burritt

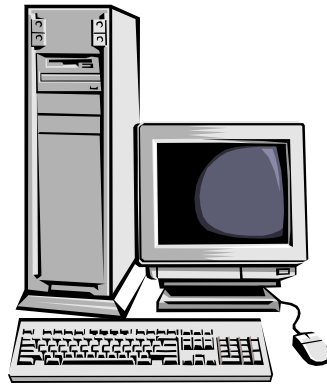
*(Continued on page 11)*

# What's New On The Web: [www.fppc.ca.gov](http://www.fppc.ca.gov)

By Hal Dasinger  
Political Reform Consultant

## More Documents Available On-line

The FPPC continues to expand our on-line collection of documents. If you're looking for an FPPC form, fact sheet, or regulation, chances are good it's available from our web site. You can find recent court decisions, Commission meeting agendas and staff memos regarding agenda items, Proposition 34 charts and highlights, and even FPPC regulations on our site. We have organized the site to make it easy to find what you're looking for, either by browsing the information categories listed on the home page, or by taking



advantage of our enhanced search tool.

## Better searches

Our staff has been working hard lately to improve the performance of our web site's search function. When fully implemented, the new programming will allow you to search forms, staff memos, regulations, and other documents linked to

the pages within our site. Of course, the new search tool will maintain the current capability to search the site pages themselves.

## Fax-on-Demand Service Ended

For a variety of reasons, the FPPC has discontinued our little-used fax-on-demand service. Beginning in November 2001, meeting agendas will no longer contain index numbers for use in retrieving supporting documents via fax-on-demand. Items formerly available via fax-on-demand — including FPPC forms, publications, agendas, and agenda item memos — are available on our web site, [www.fppc.ca.gov](http://www.fppc.ca.gov), in a user-friendly, printable format.

## *...Krausse Named Executive Director*

*(Continued from page 8)*

Strumpfer, who left the FPPC in June to return to criminal law and investigation as assistant chief deputy in the Office of the Inspector General of the state youth and adult correctional systems.

## *...Executive Fellow Placed At FPPC*

*(Continued from page 10)*

also served as an intern for Los Angeles County Supervisor Michael Antonovich and has worked as a volunteer on voter registration and election projects and major political campaigns.

"After working on numerous voter registration drives and political campaigns, the FPPC seemed like a natural choice for me to gain legislative, media and regulatory experience necessary to develop a more comprehensive understanding of the electoral process," said Burritt.

Burritt received a bachelor of science degree in public policy and management, magna cum laude, from USC. He has an associate of arts degree from Santa Monica College.

## FPPC Encourages Public Feedback On Regulations...

(Continued from page 1)

Act, the Commission adopts regulations to implement and clarify the statutes of the Act. Not everyone is familiar with how the regulatory process works at the Commission. Most people are aware that the regulations of state agencies must be adopted consistent with state law, the Administrative Procedure Act (APA). However, the Commission, like no other state agency, follows a unique set of procedures not reflected in the current version of the APA.

The ability of the Commission to follow a modified procedure was determined in March 1991, in the case of *Fair Political Practices Commission v. Office of Administrative Law and Linda Stockdale Brewer*, Sacramento County Superior Court, Case No. 512795 (affirmed by Court of Appeal, Third District (April 27, 1992), Case No. C010924 [unpub. opn.]). In that case, the court determined that the Fair Political Practices Commission's procedures for adopting, amending, or repealing regulations are subject only to those provisions of the Administrative Procedure Act in effect on June 4, 1974. That was the date on which the voters adopted the Political Reform Act of 1974.

This judicial decision granted the Commission broad latitude as to the process used in the adoption, amendment and repeal of regulations. In light of that decision, the Commission has enacted a system that affords substantial opportunity for public involvement, more than that legally required by the current APA. The process is described as follows:

### Inception of a Regulation

The need for regulatory action can become apparent in a variety of ways. For example, Proposition 34, adopted by California voters in 2000, resulted in dramatic changes to the Act that required numerous actions to adopt, amend and repeal regulations. In other cases, regulations may be con-

ceived during a Commission project, such as the Conflict of Interest Regulations Improvement Project (the "C/I Project") that was completed in December 2000. The C/I Project resulted in the adoption, repeal or amendment of 20 Commission regulations.

In addition, the public may also request regulatory action by the Commission. Section 11426 of the APA of 1974 expressly provides:

"Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a state agency requesting the adoption or repeal of a regulation.... Such a petition shall state clearly and concisely:

"(a) The substance or nature of the regulation, amendment, or repeal requested;

"(b) The reasons for the request;



## ...FPPC Encourages Public Feedback On Regulations

“(c) Reference to the authority of the state agency to take the action requested.”

Government Code section 11427 further provides: “Upon receipt of a petition requesting the adoption, amendment or repeal of a regulation pursuant to this article, a state agency shall within 30 days deny the petition in writing or schedule the matter for public hearing...”

In any case, no matter what the original source of the idea for the regulatory action, public input is solicited and accepted at any point from inception to final enactment of the regulation.

### Getting Off the Ground

The initiation of any regulatory project starts with significant research, writing, and investigation even before the regulatory language ever hits the street. This might involve discussion in numerous meetings where FPPC Legal, Technical Assistance and Enforcement Division staff members are present to establish objectives and parameters for the regulation.

There also are efforts to develop lists of interested persons from whom staff will be seeking input. Prior to taking any language to the Commission, staff will generally contact the interested persons and seek their input at an “interested persons” meeting. For example, the Commission has conducted ten “interested persons” meetings on a variety of Proposition 34 issues during the course of 2001. The “interested persons” meetings also are publicized in advance to the general public through the FPPC web site, [www.fppc.ca.gov](http://www.fppc.ca.gov). In many cases, input from interested persons at these meetings resulted in new and different regulatory language being presented to the Commission.



### Pre-Notice Discussion

Public input does not end with the interested persons meeting. While the APA (even the 1974 APA) sets out a formal, structured process for the notice and adoption of regulations, the Commission has implemented a more comprehensive system whereby Commission and public feedback is obtained in advance of the formal adoption process. In addition to the notice of adoption and the adoption hearing that most agencies are required to provide, the Commission holds pre-notice hearings.

The pre-notice hearing is conducted much like the formal adoption hearing required by the APA. The pre-notice hearing is the first opportunity for the Commission to consider issues and regulatory language. It also allows greater public input on the specific regulatory language to be presented to the Commission. This is the preferred approach for the Commission, because the Commission’s goal is to elicit as much public feedback as early in the process as possible.

In cases of more complicated regulations or controversial issues, more than one pre-notice hearing may be necessary for both the Commission and public to fully express their point of view. This was the case, for example, with the Commis-

*(Continued on page 14)*

## FPPC Encourages Feedback...

(Continued from page 13)

sion's consideration of the Proposition 34 regulation pertaining to the carry-over of campaign funds.

### Notice and Adoption

Once language and issues are resolved at the pre-notice stage of the regulatory process, the Commission follows traditional rules concerning notice and adoption of the final regulation. Generally, the adoption hearing is scheduled for two months after the pre-notice hearing. This allows staff to revise language in light of pre-notice comments, and still provide 30 days notice prior to the adoption, amendment, or repeal of any regulation. The notice of the adoption, repeal, or amendment of any Commission regulation must include a statement of the time, place, and nature of the proceedings, and reference to the authority under which the regulation is proposed. The notice also must include reference to particular code sections or other provisions of law which are being implemented, interpreted, or made specific, either the express terms or an informational summary of the proposed action, and a cost estimate prepared as prescribed by the Department of Finance.

The Commission considers the regulatory action on or after the date and time designated in the notice, and is required to afford interested persons an opportunity to comment. Once the Commission has approved the adoption, repeal, or amendment of any Commission regulation, the Commission submits a certified copy to the Office of Administrative Law for filing with the Secretary of State. The Commission also submits a certified copy of the regulation to the Rules Committee of each house of the Legislature.

### Emergency Regulations

Adoption of emergency regulations is handled

differently. In order to adopt an emergency regulation, or to make an emergency amendment or repeal of a regulation, the Commission makes a written finding of emergency. That finding includes a statement of facts constituting the emergency, and a statement that the Commission's regulatory action is necessary for the immediate preservation of the public peace, health and safety, or general welfare. Unless otherwise provided by the Commission in a written instrument filed with, or as part of, the regulation or order of repeal, the emergency regulation becomes effective upon filing and remains in effect for 120 days. In 2001, the Commission adopted eight emergency regulations in order to implement Proposition 34.

### Other Commission Actions

The Commission also implements the Act by issuing formal written opinions on matters of significant public interest. The Commission holds formal hearings on the opinion requests, at which both the requestor and members of the public have the opportunity to provide input. The Commission issued two opinions this year relating to Proposition 34, *In re Pelham* (15 FPPC Ops. 1), which analyzed various sections of the Los Angeles campaign ordinance to determine whether they conflicted with provisions of newly adopted Proposition 34, and *In re Olson*, (15 FPPC Ops. 13), which considered the validity of a Los Angeles ordinance requiring political parties to disclose "member communications" prior to an election and whether this rule was preempted by the Political Reform Act.

More information on the Commission's procedures can be obtained from the Commission's regulations, which are available on the FPPC web site ([www.fppc.ca.gov](http://www.fppc.ca.gov)), or at the Commission's Public Education Unit at 428 J Street, Suite 620, in Sacramento. The Commission's advice letters and opinions are also available on the legal research service Westlaw.

# Legislative Update

The legislature adjourned on September 15, 2001, for its interim recess. Governor Davis signed the chaptered bills listed below. Unless otherwise noted, the measures take effect January 1, 2002. Unless a special session is called, the legislature is not expected to return until January 7, 2002.

## Chaptered Bills

**AB 2** (Alquist) Chapter 901, Statutes of 2001 requires an independent expenditure committee that qualifies as a recipient committee preceding an election for which it has made independent expenditures of \$1,000 or more to file a statement of organization within 24 hours of qualifying as recipient committee.

**AB 696** (Longville) Chapter 917, Statutes of 2001 requires the Secretary of State (SOS) to provide a free method of online and electronic filing of lobbyist and campaign reports required by the Act. The bill requires that the method be available on or before December 31, 2002. Finally, the bill extends by one year, to June 1, 2002, the deadline for a report on the implementation and development of online and electronic filing, and adds a new report due no later than January 31, 2003. The bill appropriates \$600,000 to SOS for these purposes.



**AB 931** (Frommer) Chapter 336, Statutes of 2001 amends the Insurance Code to prohibit travel payments or reimbursements by specified persons to benefit the insurance commissioner.

**AB 1325** (Negrette-McLeod) Chapter 921, Statutes of 2001 expands the definition of payments to influence legislative or administrative action to include payments for the purpose of providing or preparing testimony for certain PUC proceedings.

**SB 34** (Burton) Chapter 241, Statutes of 2001 makes several clean-up changes suggested by the Commission and also several substantive changes to Proposition 34. The bill contains Commission-sponsored ballot spokesperson language and subjects political parties' payments for member communications to the same reporting requirements that applied prior to the effective date of Proposition 34. This bill was an urgency measure and became effective immediately when chaptered on September 4,

2001.

**SB 386** (Johnson) Chapter 79, Statutes of 2001 requires the Secretary of State, in rejecting an online or electronic filing, to notify the filer by electronic mail of the reason for rejection using plain, straightforward language and avoiding technical terms, so that the meaning will be easily understood.

**SB 412** (Vasconcellos) Chapter 927, Statutes of 2001 amends Elections Code to create a misdemeanor for candidates, committees, or proponents or opponents of initiatives or referendum measures who deliberately register a domain name for the purpose of directing a person away from the web site of a competing candidate or measure, or for the purpose of preventing the competing candidate or measure from acquiring a desired domain. This chapter also extends the existence of the Bipartisan Commission on Internet Political Practices to September 30, 2002, and requires that commission to report to the legislature by that date.

## Bills Proposing To Amend the Political Reform Act

The following bills remain in the legislature for possible further consideration and action next

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# Legislative Update

*(Continued from page 15)*

year:

**AB 190** (Longville) would repeal the ban on public funding of candidates and create a new system for publicly funded legislative campaigns.

**AB 374** (Matthews) would require a slate mailer that purports to represent the position of a peace officer or firefighter organization to include the number of members the organization has statewide and in the counties in which the mailer is sent. The bill would prohibit any slate mailer that is untruthful or misleading. This bill would replace with asterisks (“\*\*\*\*”) the dollar signs (“\$\$\$”), previously enjoined by the federal court, required by Prop 208 to be printed next to the name of any candidate or measure paying to appear in a slate mailer.

**AB 690** (Wesson) would provide that a candidate, committee or other organization may not expend campaign funds to pay for 1,000 or more similar telephone calls to support or oppose a candidate or ballot measure unless the name of the organization that authorized or paid for the call is disclosed during the course of each call. This bill was amended to require committees to retain scripts or recordings of calls.

**AB 693** (Longville) would lower the threshold for banned per-

sonal loans from \$500 to \$300.

**AB 1053** (Papan) is a placeholder measure that would make non-substantive changes to the Act.

**AB 1236** (Jackson) would repeal Article 5 of Chapter 4, regulating all ballot measure advertisements, and enact a similar scheme regulating state ballot measure advertisements. The bill would amend the Elections Code to require an initiative petition to indicate on its face whether it is circulated by a paid signature gatherer or a volunteer, and to disclose the campaign’s major contributors. The bill would require the ballot pamphlet to identify initiatives that were qualified by volunteers.

**SB 3** (Brulte) would prohibit a candidate, committee or slate mail organization from using campaign funds to pay for telephone calls to support or oppose a candidate or ballot measure unless the call announces that it was paid for or furnished by the candidate, committee or slate mail organization. The bill would amend the definition of “mass mailing” to provide greater specificity and expressly include items delivered by any means to a recipient’s home, business, place of employment or post office box.

**SB 157** (Haynes) would prohibit an elected state officer from sub-

mitting to binding arbitration a lawsuit against the state or a state agency if the officer has received a contribution of \$250 or more within the preceding 12 months from a party to the lawsuit, the party’s attorney or agent. The bill would also prohibit a public official from taking a contribution in excess of \$250 after taking part in certain decisions.

**SB 300** (McPherson) would delete the requirement that elected officials who do not maintain committees file semi-annual campaign statements, provided they have made no expenditures and have collected no contributions.

## Other Pending Bills

**SB 798** (Speier) would amend the Insurance Code to prohibit those regulated by the insurance commissioner and their representatives from making a contribution or gift to the insurance commissioner or a candidate for insurance commissioner except from personal funds. The bill would also prohibit any attorney or law firm under contract or under consideration for a contract to represent the Department of Insurance or the insurance commissioner from making any contribution or gift.



## FPPC Updates Successful Streamlined Major Donor Program

By John Symkowick  
Publications Assistant

The Fair Political Practices Commission voted at its August meeting to update the FPPC's successful streamlined program to expedite disclosure of major donor campaign contributions.

In the first year of the program's operation, the FPPC's Enforcement Division identified more than \$3 million in unreported contributions by major donor committees during the year 2000.

Nearly 800 committees were contacted and made aware of possible reporting duties under the Political Reform Act. Seventy-seven committees were found to have violated the Act.

The Streamlined Major Donor Program is an expedited enforcement program utilizing a standardized penalty structure for major donor committees that fail to file their campaign statements in a timely way. The program, initiated in June 2000, contributed to an 85% reduction in identified violations between the first and second semi-annual filing periods during its first year

STANDARDIZED MAJOR DONOR PENALTY SCHEDULE (Commission Adopted 12-8-00/ Amended 8-3-01)	
Enforcement Stage of Contact	Penalty Amount
<b><u>Tier 1</u></b> Committees that file late, but voluntarily upon the Enforcement Division's initial written contact.	\$400.00
<b><u>Tier 2</u></b> Committees that file late, but voluntarily upon the Enforcement Division's second written contact.	\$800.00
<b><u>Tier 3</u></b> Committees that do not voluntarily file in response to the FPPC's first or second written contact, and therefore, additional actions by the Enforcement Division are required to obtain compliance with the donor's filing obligations.	15% of dollars contributed and not reported by the donor, up to the statutory maximum per violation.
<b><u>Large or active contributor – Enhancement</u></b> Committees that either make \$50,000 or more in contributions, or make ten (10) or more contributions that are not reported during a semi-annual reporting period, will pay the appropriate base penalty <u>plus</u> an enhancement.	Tier 1, 2 or 3 penalty amount <u>and</u> 1.0 % of the total dollars contributed and not reported by the donor.

of operation. It is expected to have as much, if not more, success in its second year.

"The program increases compliance with the Political Reform Act by making committees aware of their responsibility to file a campaign statement and by assessing penalties if a committee fails to file," said FPPC Chairman Karen Getman of the major donor program. "This results in increased and timely public disclosure of campaign contributions."

At its August meeting, the Commission decided to increase

"Tier 2" penalties from \$600 to \$800 and to add additional penalties in instances where contributions were high or the number of contributions was unusually large. The three-tiered fine schedule is detailed in the accompanying chart above. The fine in an individual case depends largely upon how quickly a major donor committee fulfills its filing requirements after being contacted by the FPPC Enforcement Division.

The major donor program is one of three streamlined enforcement programs developed by the FPPC in the past two years.

# Commission Meeting Summaries

## August

### Commission Discusses Prop. 34 Regulations

At its August meeting, the Fair Political Practices Commission discussed various regulations to further implement Proposition 34, the campaign finance ballot measure passed by voters in 2000.

#### Regulations for Pre-notice Discussion

The Commission discussed the following proposed regulations and instructed staff to take appropriate action:

**18520** – Describes the requirements for submitting a statement of intention to be a candidate. *Staff was directed to present revised proposals for consideration in October.*

**18521** – Describes the specific requirements for establishing separate committees and bank accounts for each election campaign. *Staff was directed to present revised proposals for consideration in October.*

**18523** – Describes how the allocation of nondesignated loans or contributions is required to be controlled. *Staff was directed to present revised proposals for*

*consideration in October.*

**18523.1** – Describes the specific identification requirements for written solicitations of contributions. *Staff was directed to present revised proposals for consideration in October.*

**18525** – Describes the requirements of incumbent candidates' election expenses and office-holder expenses. *Staff was directed to present revised proposals for consideration in October.*

**18537.1** – Defines "subsequent election for the same elective state office" for the purpose of carry over of contributions. *Staff was directed to present revised proposals for consideration in October.*

**18404.1** – Describes the requirements for terminating committees. *The Commission voted to require termination of pre-2001 committees and directed staff to bring formal language back for adoption in October.*

**18540** – Describes the allocation of expenditures subject to the voluntary expenditure ceilings. *The Commission approved the regulation for adoption in October.*

#### Enforcement Program Review and Update

After being briefed as to the

success of the streamlined major donor program, the Commission voted to update the program. The Commission agreed to increase "tier 2" fines to \$800. The Commission also agreed to add an additional penalty equal to one percent of the total contributions not reported by a violator if the violator either fails to report \$50,000 or more during the semi-annual period that is the subject of the violation, or fails to report 10 or more contributions during the period.

The Commission also agreed to reaffirm its grant of discretion to the Enforcement Division to exclude cases from the streamlined program and adopted the proposed criteria for excluding cases from the program.

### Enforcement Actions

#### Campaign Reporting Violations

##### **Rob Guzman and Rob Guzman for State Senate.**

Guzman, a candidate for State Senate in March 2000, failed to timely file two pre-election statements, in violation of Government Code sections 84200.5 and 84200.8 and failed to timely file one semi-annual statement, in violation of Government Code section 84200 (3 counts). \$3,750 fine.

# Commission Meeting Summaries

**Freedom and Free Enterprise PAC and Thomas P. Kemp, treasurer.** In connection with the November 1998 election, the PAC failed to timely file a major donor statement, in violation of Government Code section 84200 and failed to file two late contribution reports, in violation of Government Code section 84203 (3 counts). \$3,000 fine.

**Charles Paul**, of Incline Village, Nevada, failed to file a major donor report in violation of Government Code section 84200 (1 count). \$400 fine.

## **Failure to Timely File Major Donor Campaign Statement – Streamlined Procedure**

The following persons and entities have entered into stipulations for failure to file a major donor campaign statement due during the calendar year of 2000, in violation of Government Code Section 84200:

## **2<sup>nd</sup> Tier Violation - \$600.00 fine**

**Edgewood Lane Developers, LP** of Danville, made contributions totaling \$95,600.00 (1 count).

## **September**

### **FPPC Adopts Prop. 34 Regulations**

At its September meeting the Fair Political Practices Commission discussed and/or adopted various regulations, form instructions and manuals further implementing Proposition 34, the campaign finance ballot measure passed by voters in 2000.

### **Adoption of Regulations**

The Commission voted to adopt the following regulations with specified revisions:

**18530.4** – Requires candidates to establish separate committees and open separate bank accounts for legal defense funds.

**18570** – Requires candidates/committees to return contributions with insufficient donor information.

**18531.6** – Government Code section 85316, concerning the treatment of outstanding debts, only applies to candidates or committees in elections held on or after January, 1, 2001.

### **Approval of Form Instructions and Manuals**

The Commission voted to

adopt the following form instructions and manuals with the specified revisions.

**Form 460, Instructions** – Revised because of legislative changes and Proposition 34. These new instructions are to accompany the revised Form 460 approved at the June meeting.

**2001 Campaign Manual, Addendum** – Supplement to the manual with a summary of legislative and initiative changes since the manual was published.

### **Regulations for Pre-notice Discussion**

The Commission discussed the following proposed regulations and instructed staff to take appropriate action.

**18572** – Defines the making of a contribution by a lobbyist. *Staff was directed to hold an interested persons meeting and present revised language in November or December.*

**18530.7** – Extensions of credit of more than a specified amount of time are considered contributions and therefore subject to the appropriate contribution limits. *Staff was directed to do additional analysis on the application of contribution limits to extensions of credit.*

**18530.8** – Further specifies the restrictions of personal loans

# Commission Meeting Summaries

made by candidates to their committees that exceed \$100,000.

*Staff was directed to present revised language relating to personal loans for additional prenotice discussion in November.*

**18450.1 – 18450.5** – These regulations interpret Government Code sections 84501 – 84510, added by Proposition 208, concerning the disclosure of major funding of campaign advertising. *Staff was directed to present revised language for additional prenotice discussion in November.*

## Enforcement Actions

### Concealing True Source of Campaign Contributions

**Danny Lynn Gamel, Dan Gamel, Inc., and Rudy Michael Olmos.** Gamel was the majority owner of Dan Gamel, Inc., a company that owns several recreational vehicle dealerships, including one in the City of Fresno. On January 19, 2001, the Commission issued an Accusation alleging that Gamel and Dan Gamel, Inc. laundered three campaign contributions to Fresno City Council candidate Kenneth Steitz, in violation of Government Code sections 84301 and 84300, subdivision (c) (three counts). The Accusation also charged respondent Olmos with serving as an interme-

diary for one of the illegal contributions without disclosing required information to the Steitz campaign, in violation of Government Code section 84302 (one count). Following a hearing in Fresno, Administrative Law Judge Ann Elizabeth Sarli issued a proposed decision finding that all four of these violations occurred and imposing a maximum administrative penalty of two thousand dollars for each violation. The Commission adopted the ALJ decision in its entirety; \$6,000 fine (Gamel); \$2,000 fine (Olmos).

**Royal T Management, Inc. and James William Ganson.** Royal T Management, Inc., is a Fresno-based property management company; respondent Ganson owns sixty-five percent of the company. In 1996, Royal T Management, Inc., and Ganson laundered two campaign contributions to Fresno City Council candidate Kenneth Steitz, in violation of Government Code sections 84301 and 84300, subdivision (c) (two counts). \$4,000 fine

### Campaign Reporting Violations

**California Autobody Repair PAC; John Sutherland III, treasurer.** The committee failed to file six pre-election statements and one late contribution report, in violation of Government Code sections 84200.7, 84200.8 and

84203 (seven counts). \$10,000 fine.

**Communication Workers of America, District 9 Political Education Committee, Anthony Bixler, and William Quirk.** Respondent Communication Workers of America, District 9 Political Education Committee is a general purpose committee that supports candidates for state and local elective office. Respondents Bixler and Quirk are the committee's treasurer and assistant treasurer, respectively. Between 1996 and 2000, Respondents failed to timely file eight semiannual campaign statements, three pre-election campaign statements, two late contribution reports and failed to report a \$25,000 contribution. Respondents are charged with 14 counts for violating various campaign reporting provisions of the Political Reform Act. \$26,500 fine.

**Greater San Diego Chamber of Commerce Foundation.** The foundation failed to timely file a major donor statement, in violation of Government Code section 84200 (one count). \$1,000 fine.

**Home Depot USA, Inc.,** of Atlanta, Georgia, failed to file two major donor reports in violation of Government Code section 84200 (2 counts). \$2,000 fine.

# Commission Meeting Summaries

## Lobbying Reporting

**Governmental Impact, and Jim Dantona.** Respondent Governmental Impact is a lobbying firm located in Simi Valley owned by respondent Jim Dantona, a registered lobbyist. In 1999, Respondents failed to timely file two quarterly lobbying reports, in violation of Government Code section 86117 (2 counts). \$2,000 fine.

## Statement of Economic Interests - Expedited

**Leo Bleier**, a designated employee in Mendocino County, failed to timely file a 2000 Statement of Economic Interests, in violation of Government Code section 87300. \$200 fine.

**Sharon Gowan**, a designated employee in Mendocino County, failed to timely file a 2000 Statement of Economic Interests, in violation of Government Code section 87300. \$300 fine.

## Failure to Timely File Late Contribution Report - Streamlined Procedure

**Peter Green, Committee to Re-elect Peter Green.** Huntington Beach City Council candidate Peter Green, and Committee to Re-elect Peter Green failed to file a late contribution report to reflect a \$20,000 personal loan made by Peter Green to his controlled committee, in violation of

Government Code section 84203. \$2,000 fine.

## October

### Regulations and Manual Adopted By FPPC

At its October meeting, the Fair Political Practices Commission discussed and/or adopted various regulations and manuals to further implement Proposition 34 and the ongoing conflict-of-interest regulation project.

### Adoption of Regulations

The Commission voted to adopt the following regulations with specified revisions:

**18404.2** – (Emergency Adoption) Specifies the termination dates of various pre-2001 committees.

**18536** – Describes the requirements of transferring and attributing campaign funds.

**18539.2** – Describes the requirements for electronic filing.

**18540** – Describes the allocation of expenditures subject to the voluntary expenditure ceilings.

**18542** – Requires notification when candidates make personal

contributions to their own campaign that are in excess of the applicable voluntary expenditure limits.

**18543** – (Emergency Adoption) Lifts the expenditure limits for all candidates in an election where one of the candidates has made a personal contribution in excess of the expenditure limit.

### Other Regulations Considered For Adoption

**18421.4** – Describes the requirements for reporting cumulative amounts for state candidates and state recipient committees. *Staff was directed to bring back a revised version for adoption at the December meeting.*

**18539** – Describes the filing requirements for online late contribution reports. *Staff was directed to bring back the regulation for adoption in December.*

**18550** – Describes the filing requirements for online disclosure of independent expenditures. *Staff was directed to bring back the regulation for adoption in December.*

### Approval of Forms and Manuals

The Commission voted to ratify the following manual:

**Form 460, Fact Sheet for State Candidates** – This fact sheet

# Commission Meeting Summaries

provides information on reporting requirements related to Proposition 34.

## **Regulations for Pre-notice Discussion**

The Commission discussed the following proposed regulations and instructed staff to take appropriate action:

**18232** – Defines “salary”, “per diem”, and “reimbursement for expenses”. *Staff was directed to bring back a revised regulation with the proposed amendments for adoption in December.*

**18404.1** – Describes the requirements for terminating post-2001 committees. *The Commission approved the regulation for adoption in December.*

**18520** – Describes the requirements for submitting a statement of intention to be a candidate. *Staff was directed to present appropriately revised language for adoption in December.*

**18521** – Describes the specific requirements for establishing separate committees and bank accounts for each election campaign. *Staff was directed to present appropriately revised language for adoption in December.*

**18523** – Describes the requirements for allocating nondesignated loans or contributions. *Staff was directed to present ap-*

*propriately revised language for adoption in December.*

**18523.1** – Describes the specific identification requirements for written solicitations of contributions. *Staff was directed to present appropriately revised language for adoption in December.*

**18537.1** – Defines “subsequent election for the same elective state office” for the purposes of carry over of contributions. *Staff was directed to present appropriately revised language for adoption at the December meeting.*

**18705.5** – Describes the materiality standard concerning economic interests in personal finances. *Staff was directed to bring back a revised regulation with the proposed amendments for adoption in December.*

**18706** – Describes the requirements for determining whether a material financial effect is reasonably foreseeable. *The Commission tentatively agreed to codify the analytical factors to determine foreseeability introduced in the Olson Advice Letter No. A-00-237. Staff was instructed to bring the regulation back with additional options for discussion.*

**18708** – Describes the specific requirements for legally required participation in a governmental participation. *Staff was directed*

*to bring back a revised regulation with the proposed amendments for adoption in December.*

## **Enforcement Actions**

### **Adoption of ALJ Decision**

**Salvador Blanco**, former member of the Central Region Hearing Board of the San Joaquin Valley Air Pollution Control District. On March 23, 2001, the commission issued an Accusation alleging that Blanco failed to timely file his 1998 and 1999 statements of economic interests, in violation of Government Code section 87302 (2 counts). Following a hearing in Sacramento, Administrative Law Judge Spencer A. Joe issued a proposed decision finding that both violations occurred and imposing a maximum administrative penalty of \$2,000 per violation. The Commission adopted the ALJ decision in its entirety; \$4,000 fine.

### **Misuse of Campaign Funds**

**Fernando Vellanoweth**, of Sacramento, caused the Workers' Compensation PAC and the Court Reporters PAC to make expenditures of campaign funds which conferred a substantial personal benefit on him, in violation of Government Code section 89512.5 (b) (35 counts). \$35,000 fine.

# Commission Meeting Summaries

## Campaign Reporting Violations

### **Joseph Gray Davis, Californians for Gray Davis, and Steven Gourley, Treasurer.**

During the 1998 gubernatorial campaign, respondents failed to maintain records of major donor letters in violation of Government Code section 84104 (1 count), failed to file or timely file late contribution reports in violation of Government Code section 84203 (17 counts), failed to itemize all contributions of \$100 or more, in violation of Government Code section 84211 (f) (3 counts), and failed to disclose subvendor information for expenditures, in violation of Government Code sections 84211(j)(6) and 84303 (4 counts). \$50,000 fine.

**Support Our Schools and Fredda Miller.** Support Our Schools was a committee primarily formed to support the passage of a school bond measure in Calaveras County. The committee and its treasurer failed to file pre-election campaign statements and a late contribution report, in violation of Government Code sections 84200.5, 84200.8, and 84203 (3 counts), and failed to disclose contributors of \$100 or more on its first pre-election statement, in violation of Government Code section 84211 (1 count). \$6,000 fine.

**Excellence in Student Achievement,** a San Diego political action committee, failed to disclose the name of its sponsor on its statement of organization, in violation of Government Code section 84102 (1 count), failed to disclose the name of its sponsor on several campaign statements, in violation of Government Code section 84106 (1 count), and failed to disclose the true source and guarantor of a loan, in violation of section 84211 of the Government Code (2 counts). \$4,000 fine.

## Statement of Economic Interests - Expedited

**Sharron Zoller,** an elementary school principal in the Potter Valley Unified School District located in Mendocino County, failed to timely file a 2000 statement of economic interests, in violation of Government Code section 87300. \$300 fine.

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## Civil Litigation Enforcement Actions

The Fair Political Practices Commission reached a \$23,000 civil settlement with the **California Pro Business Committee and its treasurer, former FPPC Chairman Ravinder Mehta,** for violations of the Political Reform Act. The settlement was approved by the com-

mission during a closed-session meeting in September. A civil complaint and stipulation for entry of judgment were filed with the Sacramento Superior Court on Monday, October 1. A final judgment, based on the stipulation signed by the FPPC and Mehta, was approved October 3 by Superior Court Judge Charles C. Kobayashi. The lawsuit charged that California Pro Business Committee, a campaign committee run by Mehta, paid \$258,600 to an aerial advertising company, knowing that \$7,000 of this sum would be used by the company to pay for the painting and refurbishing of Mehta's Porsche 911 Carrera automobile. The Political Reform Act prohibits campaign committees from making certain expenditures that confer substantial personal benefits on individuals authorized to approve the expenditures.

The Fair Political Practices reached a \$60,000 civil settlement with **U.S. Rep. Jane Harman and her 1998 gubernatorial campaign committee** for violations of the Political Reform Act, including failure to disclose a \$1.6 million campaign loan from the candidate and her husband. In the settlement, Harman agreed to pay \$60,000 in civil penalties to the state general fund for failing to file late-contribution reports during her campaign for governor. A civil complaint and stipulation for en-

# Commission Meeting Summaries

try of judgment were filed with Sacramento Superior Court on October 1. A final judgment, based on the stipulation signed by the FPPC and Harman, was approved October 2 by Superior Court Judge Joe S. Gray, and received by the FPPC October 4. According to the complaint, approximately two weeks before the primary election, on May 21,

1998, the Jane Harman for Governor committee received a \$1.6 million campaign loan from Rep. Harman and her husband, Dr. Sidney Harman. The committee failed to file the required report disclosing the loan within 24 hours; the loan was not disclosed until after the primary election took place. The Jane Harman for

Governor committee also failed to fully disclose \$3.4 million in media advertising expenditures. The committee disclosed paying that amount to Morris, Carrick & Guma (MCG), a firm that buys media advertising time, but failed to itemize the television stations to which MCG made payments on Harman's behalf.

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# The Clerk's Corner

## What's Ahead For Statements of Economic Interests

By Staff of the Technical Assistance Division

In November, all filing officials who forward form 700s to the Commission will receive a list of current filers to review and ensure the accuracy of our records. If any of your filers' names do not appear on the list, or if filers have left office, indicate it on the form. We are requesting the form be returned no later than December 15, 2001.

This is also a good time for you to contact your personnel department or staff liaisons to review your list of current designated officials and employees in your agency who file original statements with you so you will be prepared for the upcoming filing season in 2002.

County elections officials who receive form 700 candidate statements for Assembly, Senate, and constitutional offices in con-



nection with the March 2002 primary election must retain a copy, forward a **copy** to the Secretary of State and forward the **original** to the FPPC. A special pre-addressed envelope for forwarding the original statements to the FPPC will be sent to you in early November.

### Outreach Reservations

The 2002 annual form 700 filing season is just around the corner. Do you have new staff who aren't familiar with performing filing officer duties for these forms? Perhaps you would like an overview of what types of amendments to request when reviewing form 700s or how to

handle nonfilers. Contact our office at 1-866-275-3772 to make a reservation now for an outreach visit in the convenience of your office so you will be prepared for upcoming filings.

Check our web site  
[www.fppc.ca.gov](http://www.fppc.ca.gov)  
for the latest  
spring  
campaign seminar  
schedules

### *2002 Primary/General Filing Deadlines Available*

The filing schedules are now posted on our web site. To access the schedules from our home page, go to the blue sidebar on the left and click on Candidates and Committees. Click on Filing Deadlines and print the appropriate schedule. It will be necessary to print the schedules in "landscape" format. When you print the schedule, the blue sidebar will print out as well. If you prefer a calendar without the sidebar, contact the Technical Assistance Division and an election schedule will be faxed to you. Also note that each schedule has a question-and-answer section addressing some of the more common questions that are asked.

### ***Our Outreach Team is Ready to Help!***

To arrange for an onsite visit, contact our Technical Assistance Division at 1-866-275-3772. We can help establish a logging system, show you how to review statements, review non-filer/late filer guidelines and assist you where you need help.

# FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance is also provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I."

## Campaign

**Richard L. Poland**  
**City of Long Beach**  
**Dated July 3, 2001**

**Our File Number: A-01-123**

Payment by a candidate for a local office yellow page ad for his private business which contained language aimed at influencing voters to support his candidacy is a campaign expenditure and must be paid for from the candidate's campaign bank account.

**Diane Guyon**  
**El Dorado County Elections Dept.**

**Dated July 23, 2001**

**Our File Number: I-01-174**

The County of El Dorado is holding a ballot measure election on August 7, 2001, for the purpose of issuing bonds for a new recreational community center for the Cameron Park Community Services District (Measure C). This letter advises that any committees formed prior to June 30, 2001, may combine the semi-annual statement with the second pre-election statement. The combined statement must be filed no later than July 26, 2001.

**Lisa Ott, Campaign Manager**  
**Larry Willey for State Senate**  
**Dated August 8, 2001**

**Our File Number: I-01-103**

A contribution of an entity whose contributions are directed and controlled by an individual shall be aggregated with the con-

tributions made by that individual.

**Stephen Kaufman**  
**Soto for Senate**  
**Dated August 8, 2001**

**Our File Number: A-01-159**

A legislator may raise unlimited campaign contributions after January 1, 2001, to pay debts incurred in a pre-2001 special election previously subject to Proposition 73 contribution limits. This letter supersedes *Bauer* Advice Letter No. A-01-044 pursuant to the Commission's policy directive.

**James R. Sutton**  
**Committee to Save Our City College**  
**Dated August 30, 2001**

**Our File Number: A-01-184**

A committee formed to support a ballot measure in a community college district, whose boundaries are identical to the county in which the district is located, asks with whom it must file its campaign reports. The letter broadly discusses Section 84215 and the interplay with local jurisdiction filing requirements.

## Conflicts of Interest

**John A. Shupe**  
**Foothill DeAnza Community College District**  
**Dated July 5, 2001**

**Our File Number: I-01-089**

A public official may provide paid consultant services to an en-

# FPPC Advice Summaries

tity if the official recuses him or herself and does not make, participate in making or use or attempt to use his or her official position to influence any governmental decision where it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the entity. The official should look to the language in his or her agency's conflict-of-interest code and the official's disclosure category to determine whether a source of income of \$500 or more must be disclosed on the official's statement of economic interests.

**Charles T. Kilian, City Attorney**

**City of Cupertino**

**Dated July 17, 2001**

**Our File Number: A-01-142**

A commissioner for City of Cupertino Parks and Recreation Commission may not participate in proceedings related to a sports center development that is within 500 feet of a condominium that she owns. The commissioner has a conflict of interest based on her real property interest.

**Richard R. Terzian**  
**Rolling Hills Estates City Council**

**Dated July 31, 2001**

**Our File Number: I-01-155**

This letter discusses conflicts of interest in the context of an economic interest both as a board member of a private club and as

a member having an investment in a "for-profit" business entity. The city council member has a conflict of interest in participating in development decisions due to her status as a club director as well as her membership interest in the club.

**Kathleen J. Patterson**  
**Chino Planning Commission**  
**Dated July 31, 2001**

**Our File Number I-01-179**

A member of a city planning commission may not participate in decisions pertaining to development of land belonging to the commissioner's employer. Some decisions regarding the city's general plan, however, may be segregated from decisions with which the official has a conflict. Thus, the letter discusses segmentation of decisions as well as general conflicts analysis.

**Diane L. Bathgate**  
**City of San Juan Capistrano**  
**Dated August 13, 2001**  
**Our File Number: A-01-082**

A public official may not participate in a decision where it is reasonably foreseeable that the decision will result in a material financial effect on her source of income.

**William Murano**  
**County of Lassen**  
**Dated August 6, 2001**

**Our File Number: A-01-099**

A county supervisor will have a conflict of interest in a decision

that will either have a material financial effect on his sources of income or on his business. Income is defined to mean gross payments, rather than net profits and the entire payment the official receives from clients is considered income. The "public generally" exception does not apply to these facts.

**Stephen A. Del Guercio**  
**La Cañada-Flintridge**  
**Dated August 31, 2001**  
**Our File Number: I-01-116**

A public official is not a consultant to a governmental entity, where contract was with his law firm and the services are performed by another individual. Therefore, the "governmental salary" exception does not apply. However, the "public generally" exception applies.

**David J. Weiland, City Attorney**  
**City of Mendota**  
**Dated August 1, 2001**

**Our File Number: A-01-119**

If a public official has a legally enforceable right to income from a business entity, he has an economic interest in that entity. Therefore, he may not participate in a decision where the decision's financial effects on the business are presumed to be material, absent proof to rebut this presumption.

**John R. Harper, City Attorney**  
**City of Murrieta**  
**Dated August 3, 2001**

# FPPC Advice Summaries

**Our File Number: I-01-132**

This letter provides general advice to a city council member who is also a member of the city's General Plan Advisory Committee, that he may not participate in and/or vote on changes to the general plan designation and zoning of a five square mile area within the city if it is reasonably foreseeable the decision will materially affect his accountancy business, leasehold interest, sources of income or personal finances, unless an exception applies.

**Lori J. Barker****City of Chico****Dated August 23, 2001****Our File Number: I-01-133**

This letter addresses whether a commissioner has a conflict of interest regarding the decisions coming before the City of Chico Park Commission regarding the Lindo Channel greenway. The park commissioner owns a residence that is located within 500 feet of, but not adjacent to, Lindo Channel.

**Tim Auran****City of Burlingame****Dated August 30, 2001****Our File Number: A-01-138**

This letter discusses whether a conflict of interest exists for a city planning commissioner to participate in decisions regarding a development when he had been paid a commission for brokerage services, and the payment was made by the trust in which the

property, which was 260 feet away from the development, had been placed.

**Raymond R. Holland  
Planning & Legal Affairs  
Private Industry Council  
Dated August 31, 2001****Our File Number: I-01-140**

Representatives of entities on a local workforce investment board may have conflicts of interest in voting on matters that affect their respective represented entities. However, they still may be able to participate in such decisions, depending on the facts and circumstances, under the "public generally" exception.

**Guy D. Petzold****City of Stockton****Dated August 1, 2001****Our File Number: A-01-141**

A public official is not disqualified from participating in a governmental decision because he has no economic interest in the decision.

**Evan E. Evans****CalTrans Division of Structure  
Maintenance & Investigations  
Dated August 20, 2001****Our File Number: I-01-143**

A retired annuitant working on an hourly basis for a government agency is not precluded from accepting private sector employment with a company providing services to the same agency. However, the potential for conflict exists whenever an annuitant assumes a governmental de-

cision-making role.

**Donald E. White  
South Sutter Recreational  
Association****Dated August 1, 2001****Our File Number: A-01-149**

This letter details how a source of income is considered an economic interest and the government income exception.

**E. Clarke Moseley****City of El Monte****Dated August 31, 2001****Our File Number: A-01-161**

A contract city attorney is a public official and will have a conflict of interest in any decision that will have a material financial effect on his private law firm or any source of income. Under the specific facts, the decision did not have such effect on any source of income for the prior 12 months.

**Gene Smith****Butte County Commission for  
Children & Families****Dated August 6, 2001****Our File No.: A-01-163**

A chairperson for a county commission may participate in governmental decisions involving a member organization of a current employer, a non-profit organization, because those decisions will not have a reasonably foreseeable material financial effect on the public official's economic interest.

# FPPC Advice Summaries

**William W. Wynder**  
**Lawndale City Council**

**Dated August 14, 2001**

**Our File Number: A-01-166**

A city council member, who would otherwise be disqualified from participating in a condemnation decision requiring a supermajority of 4 of 5 members of the city council, may participate under the exception for legally required participation.

**Robert A. Martinez**  
**Pico Water District**

**Dated August 1, 2001**

**Our File Number: I-01-171**

The Political Reform Act does not restrict a public official from holding multiple public positions.

**Russ Bogh, Assemblyman**  
**California Legislature**

**Dated August 1, 2001**

**Our File Number: A-01-173**

An assemblyman, who has a defined benefit pension plan qualified under Internal Revenue Code § 401(a) with a former employer, may participate in consideration of, and vote on, legislation pertaining directly to that former employer because the assemblyman does not have an economic interest in the governmental decision.

## **Gifts**

**Bryan C. LeRoy**  
**City of Dana Point**  
**Dated August 24, 2001**

**Our File Number: I-01-191**

Free admission to a grand opening of a hotel for public officials is a gift absent an exception.

Gifts do not meet the exception in Regulation 18944.2 if the recipients are identified by the donor. However, gifts may be paid down within 30 days after receipt and they will be deemed never accepted.

**David M. Fleishman**  
**City of Pacific Grove**  
**Dated August 24, 2001**

**Our File Number: A-01-186**

A contract city attorney may not receive a gift of travel from a client of his private law practice that exceeds the \$320 gift limit.

## **Lobbying**

**Steven G. Churchwell**  
**Livingston and Mattesich**  
**Dated July 27, 2001**

**Our File Number: I-01-115**

A lobbying firm wishes to make contributions to legislative and other candidates. The firm has established a committee of three non-lobbyists, each a principal in the firm, to make all contribution decisions for the firm, with recommendations from any attorney in the firm, including the lobbyists. This letter concluded that under these facts the firm is not prohibited by Section 85702, the prohibition on lobbyist contributions to persons they lobby, from doing so.

**Timothy W. Boyer, Chief Counsel**

**State Board of Equalization**

**Dated August 7, 2001**

**Our File Number: A-01-106**

This letter discusses the effective date of the prohibition against lobbyist contributions to officials or candidates the lobbyist is registered to lobby.

## **Proposition 34**

**Lance H. Olson**  
**State Legislature**  
**Dated August 9, 2001**

**Our File Number: I-01-144**

This letter addresses a series of questions regarding Government Code § 85316 and proposed Regulation 18531.6.

## **Statement of Economic Interests**

**Sarah Lazarus, Deputy City Atty.**

**City of Huntington Beach**  
**Dated August 31, 2001**

**Our File No. I-01-164**

The members of the Huntington Beach Convention and Visitor's Bureau Board of Directors are considered members of a local government agency and are therefore subject to the Political Reform Act and required to file the annual form 700.





**Fair Political Practices Commission**  
**P.O. Box 807**  
**428 J Street, Suite 620**  
**Sacramento, CA 95812-0807**

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